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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/240,675 02/02/99 BENOIT

P 017283/0123

EXAMINER

HM12/0807

FOLEY AND LARDNER
3000 K STREET NW SUITE 500
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WASHINGTON DC 20007-8696

DEV.L.S

ART UNIT

PAPER NUMBER

1645

DATE MAILED:

08/07/01

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.
09/240,675

Applicant(s)
Benoit et al.

Examiner
S. Devi, Ph.D.

Art Unit
1645



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 23, 2001
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-26 ~~is~~/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-26 ~~is~~/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some* c) ☐ None of:

- ☒ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other:

DETAILED ACTION

Continued Prosecution Application

- 1) The request filed on 07/23/2001 (paper no. 16) for a Continued Prosecution Application (C.P.A) under 37 C.F.R 1.53(d) based on parent Application, SN 09/240,675, is acceptable and a C.P.A has been established. An action on the C.P.A follows.

Status of Claims

- 2) Claims 23-26 were amended via Applicants' After-Final amendment filed 01/08/01. Claims 23-26 are pending and under examination.

Prior Citation of Title 35 Sections

- 3) The text of those sections of Title 35 U.S. Code not included in this action can be found in a prior Office Action.

Prior Citation of References

- 4) The references cited or used as prior art in support of one or more rejections in the instant Office Action and not included on an attached form PTO-892 or form PTO-1449 have been previously cited and made of record.

Objection(s) Maintained

- 5) The objection to the drawings made in paragraph 7 of the Office Action mailed 09/03/99 (paper no. 7) is maintained for reasons set forth therein. Applicants state that they would respond to this objection upon allowance.
- 6) The objection to the oath or declaration made in paragraph 11 of the Office Action mailed 01/31/01 (paper no. 14) as being defective is maintained for reasons set forth therein.
- 7) The objection to the title made in paragraph 12 of the Office Action mailed 01/31/01 (paper no. 14) as being non-descriptive is maintained for reasons set forth therein.
- 8) The objection to the specification made in paragraphs 13(a), 13(b), 13(c) and 13(d) of the Office Action mailed 01/31/01 (paper no. 14) is maintained for reasons set forth therein.
- 9) The objection to claims 23-25 made in paragraph 18 of the Office Action mailed 01/31/01 (paper no. 14) is maintained for reasons set forth therein.

Rejection(s) Maintained

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10) The rejection of claim 24 made in paragraph 19 of the Office Action mailed 09/08/00 mailed (paper no. 10) under 35 U.S.C § 102(a) and maintained in paragraph 13 of the Office Action mailed 01/31/01 (paper no. 14) as being anticipated by Racaniello *et al.* (WO9203538 - already of record), is maintained for reasons set forth therein.

11) The rejection of claims 23-26 made in paragraph 14(a) and 14(b) of the Office Action mailed 01/31/01 (paper no. 14) under 35 U.S.C § 112, second paragraph, as being indefinite, is maintained for reasons set forth therein.

12) The rejection of claim 24 made in paragraph 15 of the Office Action mailed 01/31/01 (paper no. 14) under 35 U.S.C. § 112, first paragraph, as containing new matter, is maintained for reasons set forth therein.

13) The rejection of claims 23-26 made in paragraph 16 of the Office Action mailed 01/31/01 (paper no. 14) under 35 U.S.C. § 112, first paragraph, as being non-enabled with regard to the scope, is maintained for reasons set forth therein.

14) The rejection of claims 23 and 25 made in paragraph 17 of the Office Action mailed 01/31/01 (paper no. 14) under 35 U.S.C. § 102(a) as being anticipated by Racaniello *et al.* (WO9203538 - already of record), is maintained for reasons set forth therein.

Remarks

15) Claims 23-26 stand rejected.

16) This is a C.P.A of Applicants' earlier Application, SN 09/240,675. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Additionally, since no new rejections have been made, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicants are reminded of the extension of time policy as set forth in 37 C.F.R 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R. 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

17) Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. Papers should be transmitted via the PTO Fax Center located in Crystal Mall 1 (CM1). The transmission of such papers by facsimile must conform with the notice published in the Official Gazette, 1096 OG 30, November 15, 1989. The CM1 facsimile center's telephone number is (703) 308-4242, which receives papers 24 hours a day, seven days a week.

18) Any inquiry concerning this communication or earlier communications from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (703) 308-9347. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 7.45 a.m to 4.15 p.m. except one day each bi-week which would be disclosed on the Examiner's voice mail system

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (703) 308-3909.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.


S. Devi, Ph.D.
Primary Examiner
August 2001